

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

**IN THE MATTER OF THE CLAIM OF**

EVELYN T. BATES  
THEODORE L. BATES  
EVELYN BATES OWEN  
and  
PATRICIA B. JOHNSON

Claim No.CU-2052

**Claim No.CU -2053**

Claim No.CU-2036

Claim No.CU-2055

Decision No. CU- 6032

**Under the International Claims Settlement  
Act of 1949, as amended**

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amounts of \$235,386.00, \$301,031.00, \$103,849.00 and \$103,849.00, respectively, were presented by EVELYN T. BATES, THEODORE L. BATES, EVELYN BATES OWEN and PATRICIA B. JOHNSON, based upon the asserted losses of real and personal property in Cuba, including stock interests in Cuban corporations. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimants assert the following losses:

EVELYN T. BATES - CU-2052

80 shares of Cia. Thomas F. Turull, S.A. (Turull)	\$105,165.00
100% of Cia. de Inversiones Luisa, S.A. (Luisa)	121,221.00
Cash and bank drafts	<u>9,000.00</u>
	<u>\$235,386.00</u>

THEODORE L. BATES - CU-2053

229 shares of Turull	<u>\$301,031.00</u>
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EVELYN BATES OWEN - CU-2036

79 shares of Turull	<u>\$103,849.00</u>
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PATRICIA B. JOHNSON - CU-2055

79 shares of Turull	<u>\$103,849.00</u>
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Cia. Thomas F. Turull, S.A.

The record shows that Thomas F. Turull, a national of the United States since birth, established a business organization in Cuba in 1911. The organization was incorporated under the laws of Cuba in 1941. It operated as a jobber and commission agent, handling a diversified line of raw materials and chemical products. Eventually the corporation became the exclusive Cuban agent for a number of American and foreign companies.

Upon the death of Thomas F. Turull on March 14, 1961, his estate was inherited in equal shares by his widow, Hortense Turull (Claim No. CU-2054), and his two children, Gladys T. Johansen who died on July 6, 1964 (Claim No. CU-1916), and EVELYN T. BATES (Claim No. CU-2052). During the lifetime of the late Thomas F. Turull, all of the outstanding capital stock of Turull, aggregating 1,900 shares, was distributed.

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On the basis of the entire record, including copies of stock certificates, the Commission finds that the claimants herein owned the following shares of Turull:

EVELYN T. BATES	80
THEODORE L. BATES	229
EVELYN BATES OWEN	79
PATRICIA B. JOHNSON	<u>79</u>
Total	<u>467</u>

Claim No. CU-1916, involving in part 1,433 shares of Turull, the balance of the outstanding total, and Claim No. CU-2054, concerning other property, will be decided on their own merits.

Since Cia. Thomas F. Turull, S.A. was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record shows that Turull was intervened by the Government of Cuba on July 21, 1961 pursuant to Resolution No. 12-61 issued by the Cuban Ministry of Industry. It is concluded that claimants thereby sustained losses within the meaning of Title V of the Act.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of

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valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimants assert that each share of stock in Turull had a value of \$1,314.55, based upon the net earnings of Turull in 1960. The record indicates that Turull earned \$41,872.98 for the first six months of 1960, and \$51,789.32 for the next three months, aggregating \$93,662.30. On the basis of these earnings, averaging \$10,406.92 each month for the 9-month period, claimants have estimated that Turull's net earnings for 1960 were \$124,883.00. Claimants contend that the going concern value of Turull was 20 times such earnings, amounting to \$2,497,661.00 and therefore equivalent to \$1,314.55 for each of the 1,900 shares of outstanding capital stock.

The evidence includes copies of balance sheets for Turull as of June 30, 1955, June 30, 1956, June 30, 1957, June 30, 1958, June 30, 1959, June 30, 1960 and September 30, 1960; copies of profit and loss statements for the fiscal years ending June 30 of each year from 1955 through 1959, as well as similar statements for the 3-month period ending September 30, 1959, for the 6-month period ending June 30, 1960, and for the 3-month period ending September 30, 1960. These financial statements are certified as accurate by the accountant for Turull from 1946 until the date of loss. In addition, the record contains statements of Harry T. Johansen, Jr., claimant in Claim No. CU-1916, who has personal knowledge of Turull's operations.

The Commission has considered all the evidence of record, including net earnings and net sales, and is constrained to reject claimants' valuations

for two reasons. First, the earnings during the third quarter of 1960 (\$51,789.32) were so unusual when compared with other periods that they are not considered a sound basis for evaluation of Turull; secondly, the record fails to support the assertion that 20 times the earnings is the appropriate factor to employ in this case.

The Commission recognizes however, that Turull's earnings increased in 1959 and 1960, and that this fact should be taken into consideration. The Commission finds that the valuation most appropriate to the property and equitable to the claimants is the amount resulting from capitalizing the average annual net earnings of Turull at 10% to arrive at the going concern value of Turull. (See Claim of Garcia & Diaz, Inc., Claim No. CU-0940.) For this purpose, the Commission finds that the five-year period immediately prior to the date of loss for which evidence is available, excluding the third quarter of 1960, should be employed.

Accordingly, the Commission has selected the five-year period from July 1, 1955 through June 30, 1960, accepting a contention that the earnings in the fourth quarter of 1959 were the same as the third quarter of that year. Thus, Turull's net earnings for that five-year period were as follows:

<u>Fiscal Year Ending</u>	<u>Value</u>
June 30, 1956	\$ 40,588.22
June 30, 1957	34,548.59
June 30, 1958	22,225.53
June 30, 1959	45,822.72
June 30, 1960	<u>69,771.56</u>
Total	<u>\$212,956.62</u>

The average annual net earnings of Turull were, therefore, \$42,591.32.

Thus, it appears that the value of Turull as a going concern on July 21, 1961, the date of loss, was \$425,913.20.

Inasmuch as the value of Turull as a going concern is based upon its earnings capacity, the Commission holds that the excess of liquid assets, such as cash and current accounts receivable, over current liabilities

constitutes an additional factor to be considered in determining the overall value of the Cuban corporation.

The balance sheet for Turull as of September 30, 1960, the last available one prior to the date of loss, shows cash in the amount of \$103,501.44, and current accounts receivable in the aggregate amount of \$396,713.54. The Commission is informed that \$2,000.00 out of the cash account was maintained in a bank in the United States. Since that amount could not have been taken by Cuba, the Commission finds that the cash account of Turull in Cuba was \$101,501.44. Further, the Commission has been informed that of the accounts receivable, the items "Advances to officers and employees" in the amount of \$14,097.87, and "Suppliers' Accounts (debit balances)" in the amount of \$1,368.88 were due from persons outside of Cuba and therefore could not have been taken by the Government of Cuba. Accordingly, the Commission finds that the amount of the accounts receivable was \$381,246.79.

Thus, the cash and accounts receivable aggregated \$482,748.23. The accounts payable aggregated \$251,444.31, and thus the net liquid assets were \$231,303.92.

The Commission therefore finds that the overall value of Turull on July 21, 1961, the date of loss, was \$657,217.12. Since Turull had 1,900 shares of outstanding capital stock on the date of loss, each share of stock had a value of \$345.90375. The Commission therefore finds that claimants sustained the following losses on July 21, 1961 with respect to their stock interests in Turull:

EVELYN T. BATES (CU-2052)

80 shares	\$27,672.30
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THEODORE L. BATES (CU-2053)

229 shares	\$79,211.96
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EVELYN BATES OWEN (CU-2036)

79 shares	\$27,326.40
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PATRICIA B. JOHNSON (CU-2055)

79 shares	\$27,326.40
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The remaining issues relate to the balance of Claim No. CU-2052.

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Cia. de Inversiones Luisa, S.A.

Based upon copies of stock certificates and affidavits from individuals having personal knowledge of the facts, the Commission finds that EVELYN T. BATES, hereafter called claimant, acquired by gift from her late father a 100% stock interest in Cia. Inversiones Luisa, S.A., a Cuban corporation.

Based upon a report from abroad and pertinent affidavits and statements, the Commission finds that Luisa owned improved real property at 22,228 Avenida 15, Alturas de Jaimanitas, Marianao, Havana, Cuba, and personal property therein. The Commission further finds on the basis of the evidence of record (including the record in Claim No. CU-1916 involving, inter alia, adjoining improved realty), that the properties belonging to Luisa were taken by the Government of Cuba in August 1961, and in the absence of evidence to the contrary, the Commission finds that the taking occurred on August 15, 1961.

Claimant asserts the following losses with respect to Luisa:

Land	\$ 43,721.00
Buildings	62,500.00
Personal property	<u>15,000.00</u>
Total	<u>\$121,221.00</u>

The report from abroad indicates that the improved real property had a surface area of 5,829.96 square meters and was unencumbered. It appears that the house was constructed of brick and cement having two stories, about ten rooms and usual utilities. There was also a 2-car garage. The land was landscaped. The record includes photographs of the property and appraisals which corroborate claimant's valuations.

Upon consideration of the entire record, the Commission finds that claimant's valuations are fair and reasonable and that the aggregate value of the land and the improvements on August 15, 1961 was \$106,221.00.

Claimant has submitted a list of various items of personal property in the house which aggregates \$15,000.00 and includes, inter alia, oil paintings valued at \$10,000.00 and sterling silver valued at \$1,400.00.

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Based upon the entire record, the Commission finds that claimant's valuation of the personal property is fair and reasonable and that the aggregate value of the items of personal property situated in the house on August 15, 1961 was \$15,000.00.

The record shows that Luisa owned no assets other than the said improved real and personal property. It further appears that Luisa had no obligations on the date of loss. Accordingly, the Commission finds that the net worth of Luisa on August 15, 1961 was \$121,221.00 and concludes that claimant sustained a loss in that amount.

Cash and Bank Drafts

Claimant asserts a loss of \$9,000.00 based upon a one-third interest in certain cash and bank drafts in Cuba inherited from her late father.

The record includes an affidavit of June 4, 1965 from Cecil Lawrence Freeman, a former agent of the late Thomas F. Turull. It appears that Mr. Freeman purchased with funds belonging to the late Mr. Turull three bank drafts from the Royal Bank of Canada, Havana Branch, as follows:

No. 94702	\$ 6,000.00
No. 94748	5,000.00
No. 94796	<u>5,000.00</u>
Total	<u>\$16,000.00</u>

Affiant further states that he delivered the bank drafts to a resident of Cuba for safekeeping. It appears that claimant's father was unable to cash the drafts or otherwise obtain the proceeds thereof due to Cuba's actions.

The Commission finds that claimant owned a one-third interest in \$16,000.00 on deposit with the Royal Bank of Canada, Havana Branch. (See Claim of Ana Maria Lopez Gutierrez, Claim No. CU-0197.)

On December 6, 1961, the Cuban Government published Law 989, which effected the confiscation of bank accounts and other property of persons who had left the country. The Commission finds that this law applied to the



said bank account, and in the absence of evidence to the contrary, the Commission finds that the bank account was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Gutierrez, supra.) Accordingly, the Commission finds that claimant sustained a loss in the amount of \$5,333.33.

It further appears from Mr. Freeman's affidavit of June 4, 1965 that he also had in his possession \$11,000.00 in Cuban currency belonging to the late Mr. Turull. These funds were also delivered to the resident of Cuba for safekeeping. No evidence has been submitted to show what disposition was made of the currency. No other evidence in support of this portion of the claim is of record.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of her claim based on a one-third interest in Cuban currency in the amount of \$11,000.00. The evidence does not establish that the currency was taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

EVELYN T. BATES' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Turull	July 21, 1961	\$ 27,672.30
Luisa	August 15, 1961	121,221.00
Bank drafts	December 6, 1961	<u>5,333.33</u>
Total		<u>\$154,226.63</u>

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

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<u>FROM</u>	<u>ON</u>
<u>EVELYN T. BATES - CU-2052</u>	
July 21, 1961	\$ 27,672.30
August 15, 1961	121,221.00
December 6, 1961	<u>5,333.33</u>
Total	<u>\$154,226.63</u>

<u>THEODORE L. BATES - CU-2053</u>	
July 21, 1961	<u>\$ 79,211.96</u>

<u>EVELYN BATES OWEN - CU-2036</u>	
July 21, 1961	<u>\$ 27,326.40</u>

<u>PATRICIA B. JOHNSON - CU-2055</u>	
July 21, 1961	<u>\$ 27,326.40</u>

CERTIFICATIONS OF LOSS

The Commission certifies that EVELYN T. BATES suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifty-four Thousand Two Hundred Twenty-six Dollars and Sixty-three Cents (\$154,226.63) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that THEODORE L. BATES suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-nine Thousand Two Hundred Eleven Dollars and Ninety-six Cents (\$79,211.96) with interest thereon at 6% per annum from July 21, 1961 to the date of settlement;


The Commission certifies that EVELYN BATES OWEN suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-seven Thousand Three Hundred Twenty-six Dollars and Forty Cents (\$27,326.40) with interest thereon at 6% per annum from July 21, 1961 to the date of settlement; and

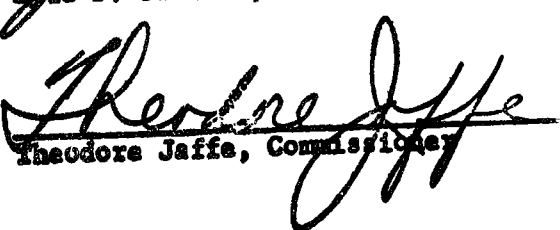
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The Commission certifies that PATRICIA B. JOHNSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-seven Thousand Three Hundred Twenty-six Dollars and Forty Cents (\$27,326.40) with interest thereon at 6% per annum from July 21, 1961 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

JAN 12 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimants establish retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the overnment of Cuba. Provision is only made for the determination by the ommission of the validity and amounts of such claims. Section 501 of the tatute specifically precludes any authorization for appropriations for ayment of these claims. The Commission is required to certify its indings to the Secretary of State for possible use in future negotiations ith the Government of Cuba.

OTICE: Pursuant to the Regulations of the Commission, if no objections re filed within 15 days after service or receipt of notice of this roposed Decision, the decision will be entered as the Final Decision of e Commission upon the expiration of 30 days after such service or receipt f tice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 31.1(e) and (g), as amended (1970).)

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